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10/032,251	12/21/2001	Peter V. Radatti	CSI-01	6643

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EXAMINER

PYZOCHA, MICHAEL J

ART UNIT	PAPER NUMBER
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2137

MAIL DATE	DELIVERY MODE
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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/032,251

Applicant(s)

RADATTI, PETER V.

Examiner

Michael Pyzocha

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 September 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 September 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-27 are pending.
2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 09/14/2006 has been entered.

Drawings

3. The informal drawings are not of sufficient quality to permit examination. Accordingly, replacement drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to this Office action. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action.

Applicant is given a TWO MONTH time period to submit new drawings in compliance with 37 CFR 1.81. Extensions of time may

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be obtained under the provisions of 37 CFR 1.136(a). Failure to timely submit replacement drawing sheets will result in ABANDONMENT of the application.

The drawings are at least partially cut off at the top of the page and many of the handwritten words are unreadable.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 15-17 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 15-17 are related to mere arrangements of data (e.g. a hash code table or state code). At best, the article claims relate to non-functional descriptive material on a computer readable medium. See MPEP 2106.01.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 8, 11, 13, 16-19, 21, 23 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Nachenberg (US 6021510).

As per claims 1, 16-19 and 25, Nachenberg discloses providing a hash code table of a client said hash code table being provided for storing a plurality of files (see column 2 lines 26-37 where the database stores a hashes of plurality of files and column 1 line 60 through column 2 line 9); providing a client state code of a client; and comparing said client state code to said hash code table (see column 4 lines 40-47) and generating an alert mechanism when a deviation threshold is reached based on a deviation between said hash code table values for said client and said client state code (see column 4 lines 54-64).

As per claims 8, 11, 21 and 23, Nachenberg discloses reporting the results of the comparison and initiating a client status mechanism (see column 4 lines 54-64).

As per claim 13, Feigen et al discloses generating a client state code using at least one compiled client hash value (see column 4 lines 40-47).

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Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. Claims 2, 3, 6, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nachenberg as applied to claims 1 and 19 above, and further in view of Angelo (US 5944821).

As per claims 2, 3, 6, and 20, Nachenberg fails to disclose the hash table is a secure hash table.

However, Angelo teaches the use of a secure hash table (see column 4 lines 27-40).

At the time of the invention it would have been obvious to a person of ordinary skill in the art for the hash table of Nachenberg to be a secure hash table.

Motivation to do so would have been to provide and integrity assessment code.

9. Claims 4, 5, 14, 15 and 26-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nachenberg (alone or in

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combination with Angelo) as applied to claims 3 and 25 above, in view of Crockett et al (US 5619644).

As per claims 4, 5, 14, 15 and 26-27, Nachenberg fails to disclose grouping (i.e. compiled) the secure system data file and extracting the modal hash value.

However, Crockett teaches grouping files (see column 3 line 59 through column 4 line 22) and Official Notice is taken regarding extracting the modal hash value.

At the time of the invention it would have been obvious to a person of ordinary skill in the art to use Crockett's teaching to group the files of Nachenberg and to extract the modal hash value.

Motivation to do so would have been to recover from a disaster and to use the most common value among the group.

10. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Nachenberg and Angelo system as applied to claim 3 above, and further in view of IEEE.

As per claim 7, the modified Nachenberg and Angelo system fails to disclose using a baseline to generate the table.

However, IEEE teaches the use of a baseline (see page 87).

At the time of the invention it would have been obvious to a person of ordinary skill in the art to use IEEE's baseline to generate the table of the modified Nachenberg and Angelo system.

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Motivation to do so would have been to have an agreed upon product (see page 87).

11. Claims 9 and 22 rejected under 35 U.S.C. 103(a) as being unpatentable over Nachenberg.

As per claims 9 and 22, Nachenberg fails to disclose logging the results of the comparison.

However, Official Notice is taken that at the time of the invention it would have been obvious to one of ordinary skill in the art to log Nachenberg's comparison results.

Motivation to do so would have been to have a record of the comparison.

12. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nachenberg as applied to claim 1 above, and further in view of Adya et al. (US 20020188605).

As per claim 10, Nachenberg fails to disclose securing a client in lock down mode.

However, Adya et al. teach such a limitation (see paragraphs 144-146).

Therefore, it would have been obvious to a person having ordinary skill in the art at the time of the invention was made to have Nachenberg include the step of securing a system in lock down mode.

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Motivation to do so would have been securing a system in lock down mode because it provides for database security and file authentication.

13. Claims 12 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nachenberg as applied to claims 1 and 19 above, and further in view of Pascucci et al. (US 5463735).

As per claims 12 and 24, Nachenberg fails to disclose initiating an Auto Restore component.

However, Pascucci et al. teaches an Auto Restore component (see column 72 lines 47-65).

At the time of the invention it would have been obvious to a person of ordinary skill in the art to use Pascucci et al's auto restore feature in the system of Feigen et al.

Motivation to do so would have been to prevent commands from being issued until after all regularly time scheduled commands have been updated.

Double Patenting

14. Applicant is advised that should claims 18 and 19 be found allowable, claim 19 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in

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wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim.

See MPEP § 706.03(k).

15. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

16. Claims 1-3, 8-11, 13-23 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 11-15, 18, 20, 22-24 of copending Application No. 10/032252 (now US 7143113).

Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims in the instant application are substantially the same as the claims in the cited application and it would have been obvious at the time of the invention to one of ordinary skill in the art to use the claims in 10/032252 to secure, maintain, monitor, and control

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computer networks and clients. Motivation to do so would have been to protect a network.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

17. Claims 4-7, 12 and 24 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 11-15, 18, 20, 22-24 of copending Application No. 10/032252 in view of Nachenberg, Angelo, Crocket et al., IEEE, and Pascucci et al. as applied in the above claims.

This is a provisional obviousness-type double patenting rejection.

Response to Arguments

18. Applicant's arguments with respect to claims 1-27 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Pyzocha whose telephone number is (571) 272-3875. The examiner

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can normally be reached on 7:00am - 4:30pm first Fridays of the bi-week off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Emmanuel Moise can be reached on (571) 272-3865. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MJP


EMMANUEL L. MOISE
SUPERVISORY PATENT EXAMINER